IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.378 of 2007

Decided on:December 29, 2007.

State of H.P. **…Appellant.**

VERSUS

Prem Lal **….Respondent.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr M.L.Chauhan, Addl.A.G.**

For the respondent:

Kuldip Singh, Judge (Oral):

This is an appeal under Section 377 of the Code of Criminal Procedure for enhancement of sentence imposed on 19.7.2007 by learned Judicial Magistrate 2nd Class, Court No.(VI), Shimla in Criminal Case No.182-2 of 2006/04 under Sections 279, 337 I.P.C.

2. The prosecution case, in brief, is that respondent on 25.2.2004, at about 1 A.M., near Goel Motors, Tara Devi, Shimla, while driving Car No.HP-03A-2526 in a rash or negligent manner caused accident. In the accident Indu Khanna and her husband, who were travelling in the car, sustained injuries. On *Ruka* Ext.PW-10/A of PW-10 Ravinder Kumar F.I.R. Ext.PW-10/B came to be registered

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Whether the reporters of the local papers maybe allowed to see the judgment? Yes

at Police Station, Boileauganj. After the conclusion of the investigation, challan was filed under Sections 279, 337 IPC and notice of accusation was put to the respondent accordingly to which he pleaded not guilty and claimed trial. The prosecution examined 10 witnesses. The statement of respondent was recorded under Section 313 Cr.P.C. in which he pleaded his innocence but respondent did not lead any evidence in defence. The learned trial Magistrate convicted the respondent under Sections 279, 337 IPC and after giving benefit of Section 3 of the Probation of Offenders Act, 1958 sentenced him to pay a fine of Rs.500 for offence under Section 279 and fine of Rs.200 and sentence till the rising of Court under Section 337 I.P.C. The State has filed appeal for enhancement of sentence against the impugned judgment.

3. Heard and perused the record. PW-6 Dr.Ghamshyam Dass has stated that he examined Indu Khanna and Sunil Khanna and found simple injuries on their person. PW-8 Sunil Khanna has stated that on 24.2.2004 he was travelling in the car which was being driven by the respondent. The driver lost the control and hit the rock on the hill side as a result of which his wife received injuries near her eye and he also received internal injuries. He has stated that there is a deep curve at the place of accident. The learned trial Magistrate has convicted the respondent. The perusal of impugned judgment would show that PW-8 Sunil Khanna and PW-9 Indu Khanna though they have stated about the rash or negligent driving on the part of the respondent but keeping in view the injuries sustained by PW-8 and

PW-9, the trial Magistrate has sentenced the respondent and sentence cannot be termed inadequate in view of the magnitude of the negligence which can be verified from injuries sustained by PW-8 and PW-9. PW-8 and PW-9 have suffered minor injuries. No previous conviction for similar type of offence of respondent has been noticed by learned trial Court. The respondent has suffered the trial for more than three years but he has been convicted. The prosecution has failed to make out any case for interference. Accordingly, the appeal is dismissed.

December 29, 2007. ***(Kuldip Singh), J.***

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